

If telecommunications retailers provide “concierge type services” and also transmission services, the charges for each must be disaggregated and separately stated from telecommunications charges in the books and records of the retailers. See 35 ILCS 630/2(a) and 630(c). (This is a GIL.)

June 26, 2007

Dear Xxxxx:

This letter is in response to your letter dated April 25, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings (“PLRs”) are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department’s regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter (“GIL”) is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC a vendor of tax compliance software to the telecommunications industry, is currently researching the taxability of a distinct set of services sold by providers of prepaid telephone service. The services in question can most aptly be described as ‘concierge-type services’ that are typically sold to affluent consumers in the form of an ‘add-on’ to cellular monthly service. These ‘concierge services’ often parallel the types of services offered on a courtesy or fee-basis to business travelers. Examples of such services are: airline, restaurant, and hotel reservations, theatre ticket bookings, and an assortment of other travel and entertainment arrangements.

XYZ company that seeks to market these high-end, business-class services, plans to sell these services together with its core cellular communications services on a purely *bundled* basis. Namely, the consumer who subscribes to this luxury suite of services will be billed one fixed, flat-rate monthly sum for the entire package of telecommunications and non-telecommunications related services. Additionally, the *cellular* component will consist of both wireless voice and data communications capability. Although the customer's monthly invoice shall only display one combined sum, the vendor is capable of assigning monetary values to each individual component based upon their going-

price in the competitive marketplace. A hypothetical example of how such services may be valued economically is as follows:

Telecommunications:

<u>Service</u>	<u>Value</u>
Local Calling Area	\$80.00
Long Distance/Roaming	40.00
Wireless Data	60.00
Directory Assistance	30.00
Sub-Total =	<u>\$210.00</u>

Non-Telecommunications:

<u>Service</u>	<u>Value</u>
Concierge Services	\$180.00
Phone Insurance	10.00
Sub-Total =	<u>\$190.00</u>

Monthly Invoice Amount a \$400.00 (\$210.00 Telecom + \$190.00 Non-Telecom)

Based upon the above fact pattern, we seek answers to the following questions regarding your state's sales tax:

Questions:

1 – Does your state permit a company like XVZ to engage in back-office unbundling in order to separate out nontaxable components from taxable components and to calculate its tax liability accordingly, or would the entire non-itemized monthly sum of \$400 be treated as *taxable*?

2 – If back-office unbundling is a permitted option, would the entire telecommunications portion of \$210 be treated as taxable, or does your state view any of the telecommunications components as being *non-taxable*?

3 – As a general rule, does *your state sales tax apply to the furnishing of non-professional services*?

4 – Specifically, is revenue derived from the providing of 'concierge-type services' such as booking airline reservations or making other travel and entertainment arrangements taxable? Likewise, are monthly premiums for telephone insurance classified as a taxable transaction?

Please provide us with detailed written answers to the above set of questions.

Thank you in advance for your timely response,

DEPARTMENT'S RESPONSE

Without looking at the actual agreements, we cannot determine with certainty whether services are prepaid telephone calling arrangements subject to sales tax or telecommunications services

subject to the Telecommunications Excise Tax. Generally if the service is provided on an ongoing subscription basis, (for example, an existing account that is billed monthly by the supplier) the service is more likely to be subject to the Telecommunications Excise Tax. We hope that the following information is helpful.

The Department's regulation at 86 Ill. Adm. Code 495.140(a) provides that *[o]n and after January 1, 2001, prepaid telephone calling arrangements shall not be considered telecommunications subject to the Telecommunications Excise Tax. (Sections 3 and 4 of the Act) "Prepaid telephone calling arrangements" means the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more intrastate, interstate, or international telephone calls or other telecommunications using an access number, an authorization code, or both, whether manually or electronically dialed, for which payment to a retailer must be made in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. Prepaid telephone calling arrangements include the recharge of a prepaid calling arrangement. For purposes of this Section, "recharge" means the purchase of additional prepaid telephone or telecommunications services whether or not the purchaser acquires a different access number or authorization code. For purposes of this Section, "telecommunications" means that term as defined in Section 2 of the Telecommunications Excise Tax Act [35 ILCS 630]. "Prepaid telephone calling arrangement" does not include an arrangement whereby a customer purchases a payment card and pursuant to which the service provider reflects the amount of the purchase as a credit on an account for a customer under an existing subscription plan. (Section 2 of the Act)*

Beginning January 1, 2001, prepaid telephone calling arrangements are considered tangible personal property subject to Retailers' Occupation Tax liability (35 ILCS 120/2) and not the Telecommunications Excise Tax. Prepaid telephone plans that do not meet the definition of a "prepaid telephone calling arrangement" are taxed under the Telecommunications Excise Tax.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code Part 495. Pursuant to Section 495.100(a), "gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money, whether paid in money or otherwise, including cash credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of material used, labor or service cost or any other expense whatsoever. For general information regarding application of the Telecommunications Excise Tax, please refer to 86 Ill. Adm. Code 495.100, which sets forth examples within the meaning of "Gross Charges."

Sections 2a and 2c of the Telecommunications Excise Tax, 35 ILCS 630/2(a) and 630(c) describe "gross receipts" and "telecommunications." If telecommunications retailers provide "services" and also transmission services, the charges for each must be disaggregated and separately stated from telecommunications charges in the books and records of the retailers. This would include, for example, "concierge-type services" and telephone insurance. If these charges are not thus disaggregated, the entire charge is taxable as a sale of telecommunications subject to the Telecommunications Excise Tax. (The State of Illinois does not impose its sales tax on services.)

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk